PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)
	)
Luke David Jagger et al.	) Art Unit: 2176
	)
Application No. 10/075,722	) Examiner: Blackwell, James H.
	)
Filed: 02/14/2002	) Date: September 14, 2006
	)
For: METHOD AND SYSTEM FOR	)
IDENTIFYING UNSOLICITED MAIL	)
UTILIZING CHECKSUMS	)
	)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

REPLY BRIEF (37 C.F.R. § 41.37)

This Reply Brief is being filed within two (2) months of the mailing of the Examiner's Answer mailed on 07/14/2006.

Following is an issue-by-issue reply to the Examiner's Answer.

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Issue # 1:

Group #1: Claims 1, 2, 5, 9-10, 13-14, 17, 18 and 20

With respect to each of the independent claims, the Examiner has relied on step 708 in Figure 7A of Ralston to make a prior art showing of appellant's claimed "removing non-static data including visible end-of-line characters and headers, from the electronic mail message" (see the same or similar, but not necessarily identical language in each of the independent claims).

Appellant respectfully asserts that item 708 specifically shows "strip[ping] headers and hidden information to leave visible text body of message." Clearly, removing hidden information, as taught in Ralston, does not meet, and actually even *teaches away* from, appellant's claimed "removing non-static data including visible end-of-line characters" (emphasis added).

In the Advisory Action dated January 11, 2006, the Examiner has responded to appellant's arguments by stating that "end-of-line characters are typically, from the point of view of an observer, hidden in the sense that they are not visible unless made so by representing them with a character...or other symbol that is visible" and that "rendering such characters 'visible' for purposes of detection would only make sense if the detector relied on a visual or optically-detectable means."

Appellant respectfully asserts that what is specifically claimed is "removing non-static data including visible end-of-line characters and headers, from the electronic mail message" (emphasis added). In contrast, Ralston discloses removing hidden information. First, this does not meet appellant's "visible end-of-line characters," as claimed. Second, the Examiner's statements above appear to be based on an inherency argument because, while Ralston fails to disclose the same, the Examiner seems to be arguing that appellant's claimed feature "would only make sense." It is noted, however, that appellant's claim language would not be inherent in view of Ralston since, as argued above, Ralston's disclosure is a classic example of *teaching away* from appellant's claim language, thereby undermining any inherency argument.

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It thus appears that the Examiner has relied on an inherency argument regarding the above emphasized claim limitations. In view of the arguments made hereinabove, any such inherency argument has been adequately rebutted, and a notice of allowance or a specific prior art showing of such claim features, in combination with the remaining claim elements is respectfully requested. (See MPEP 2112)

In the Examiner's Answer mailed 07/14/2006, the Examiner has reiterated his arguement that "[i]tem 708 of Fig. 7A of Ralston teaches stripping (removing) headers and hidden information to leave visible text body of [the] message." Appellant again respectfully asserts that Col. 12, line 66 to Col. 13, line 5 in Ralston merely discloses that "[i]nformation such as headers or hidden information in the body 408 of the message 400 is removed to leave behind the visible body 408 of the message 400 in step 708" where the "[h]idden information is anything that is not visible to the user when reading the message such as white text on a white background or other HTML information" (emphasis added).

Merely disclosing that information such as headers or hidden information which is not visible is removed, as in Ralston, simply fails to even suggest "removing non-static data including visible end-of-line characters and headers, from the electronic mail message," as claimed by appellant (emphasis added). Clearly, Ralston's disclosure of headers or hidden information that is not visible, such as white text on a white background or other HTML information, fails to meet appellant's claimed "visible end-of-line characters," as claimed (emphasis added).

Also, in the Examiner's Answer, the Examiner has argued that "it is typical of electronic documents, including emails to contain end-of-line control codes such as carriage controls and line feeds which are usually not visible when a users view the document with a word processor or email client" and that "[w]hether or not such end-of-line content is visible, or made visible seems irrelevant to the Examiner." The Examiner further argues that "[m]ore important is the fact that such characters and character sequences need to be removed to avoid confusion and inconsistencies in the creation of fingerprints (checksums)..."

Again, appellant respectfully disagrees with the Examiner's arguments and asserts that Ralston only discloses removing "[h]idden information [which] is anything that is not visible to the user when

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reading the message such as white text on a white background or other HTML information" (emphasis added). Clearly, Ralston expressly teaches removing anything that is <u>not</u> visible, which fails to meet appellant's claimed "visible end-of-line characters," as claimed. Moreover, appellant respectfully points out that, as claimed, "non-static data including visible end-of-line characters and headers [is removed]...to prevent the non-static data from being subject to the checksum, so that non-static data forged by spammers does not compromise the identification of the electronic message as the unsolicited message," which clearly shows, in the claims, the relevance of "removing...<u>visible end-of-line characters</u> and headers," as specifically claimed (emphasis added).

Still with respect to each of the independent claims, the Examiner has relied on Col. 14, lines 10-20 and Col. 13, lines 7-14 in Ralston to make a prior art showing of appellant's claimed technique "wherein the non-static data is removed to prevent the non-static data from being subject to the checksum, so that non-static data forged by spammers does not compromise the identification of the electronic message as the unsolicited message." Appellant respectfully asserts that such excerpt only teaches removing headers or hidden information that "could potentially confuse processing of the message." However, as argued above, Ralston does not teach removing <u>non-static data</u> in the manner claimed by appellant, and especially not "so that non-static data forged by spammers does not compromise the identification of the electronic message as the unsolicited message," as specifically claimed by appellant.

In the Advisory Action dated January 11, 2006, the Examiner has failed to even respond to appellant's specific arguments. Thus, appellant again emphasizes that simply nowhere does Ralston teach removing the non-static data such that "non-static data forged by spammers does not compromise the identification of the electronic message as the unsolicited message," as appellant specifically claims.

In the Examiner's Answer mailed 07/14/2006, the Examiner has argued that "Col. 13, lines 5-6 of Ralston teach that such information is removed as to avoid potentially confusing processing of the message (item 400 of Fig. 4)" and that "[t]he Examiner interprets this statement as teaching that such data (hidden and headers) is removed so that processing of the message, including the generation of fingerprints (understood as a type of checksum) is made simpler and less subject to confusion."

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Appellant respectfully asserts that, as specifically disclosed in Ralston, "[i]nformation such as headers or hidden information in the body 408 of the message 400 is removed to leave behind the visible body 408 of the message" merely because "hidden information could potentially confuse processing of the message 400" (emphasis added). It is clear that the Examiner has simply not taken into consideration the full weight of appellant's claim limitations.

Specifically, the mere teaching in Ralston that headers or hidden information in the message body is removed, since hidden information could potentially confuse processing, fails to even suggest a technique "wherein the non-static data is removed to prevent the non-static data from being subject to the checksum, so that non-static data forged by spammers does not compromise the identification of the electronic message as the unsolicited message," as claimed by appellant (emphasis added).

In addition, appellant points out that the Examiner has even argued that "such data (hidden and headers) is removed so that processing of the message…is made simpler and less subject to confusion." Appellant respectfully asserts that making the processing simpler by removing the hidden information, as in Ralston, does not even suggest that "non-static data is removed… so that non-static data forged by spammers does not compromise the identification of the electronic message as the unsolicited message," as appellant claims (emphasis added).

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Verdegaal Bros. v. Union Oil Co. Of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. Richardson v. Suzuki Motor Co.868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. This criterion has simply not been met by the Ralston reference, as noted above.

Group #2: Claims 3 and 15

The Examiner has relied on Figures 7A-7D in Ralston to make a prior art showing of appellant's claimed technique "wherein the portions comprise lines of data." Appellant respectfully asserts that Figures 7A and 7B merely relate to forming a fingerprint for each word, whereas Figures 7C

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and 7D relate to forming a fingerprint for groups of <u>characters</u>. Simply nowhere in Ralston is there any disclosure of individual checksums for portions of data, where such portions include <u>lines</u> of data, in the context claimed by appellant.

In the Examiner's Answer mailed 07/14/2006, the Examiner has argued that "the limitation [wherein the portions comprise lines of data] does not contain any definition of what constitutes a line of data." Further, the Examiner has argued that "Ralston's teaching of forming fingerprints for words (Figs. 7A-B) and groups of characters (Figs. 7C-D) are interpreted as forming lines of lengths depending on the number of characters in the word(s) or groups of characters."

Appellant respectfully disagrees. Appellant respectfully asserts Ralston only discloses that the "<u>word</u> is matched against the possible words in a fingerprint histogram" where "[t]he fingerprint histogram includes five hundred of the most common words used in unsolicited e-mail message" (Col. 13, lines 11-15 – emphasis added). Further, Ralston discloses that "[t]he <u>visible text body</u> is loaded into <u>a string or an array</u>..." and that "the <u>first group of characters</u> in the array are loaded into an <u>exemplar algorithm</u>" (Col. 14, lines 21-25 – emphasis added). Appellant also notes that Ralston teaches that, as an example, "a group of twenty characters at one time could be used to generate an exemplar before incrementing one character in the array" (Col. 14, lines 3-5).

The mere disclosure of matching a word to a fingerprint histogram and loading groups of characters into a exemplar algorithm simply fails to even suggest a technique "wherein the portions comprise <u>lines of data</u>," as claimed by appellant (emphasis added). In particular, when read in context, appellant specifically claims "generating individual checksums" (see Claims 2 and 14) for "lines of data." Thus, individual checksums are specifically generated for <u>lines</u> of data, in the manner claimed by appellant, and not simply for words or groups consisting of a predetermined number of characters, as in Ralston.

Again, appellant respectfully asserts that the Ralston reference fails to meet <u>all</u> of appellant's claim language, as noted above.

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Group #3: Claim 8

The Examiner has relied on Figures 5A-5F in Ralston to make a prior art showing of appellant's claimed "deleting the electronic mail message if the message is identified as an unsolicited message." Appellant respectfully asserts that such Figures only disclose "Move to Bulk Mail Folder" when the e-mail is determined to be suspect. Clearly, moving an e-mail to a folder does not meet "deleting the electronic mail message," as specifically claimed by appellant (emphasis added).

In the Examiner's Answer mailed 07/14/2006, the Examiner has argued that "Ralston teaches moving (from normal viewing by the user) those email messages determined to be of bulk (unsolicited, spam) origin" and that "[t]he Examiner interprets this as effectively removing (deleting) such bulk email from the users normal inbox or other folders that it is desired by the user to contain only 'approved' or legitimate emails."

Appellant respectfully disagrees with the Examiner's arguments. Ralston teaches that "[i]n step 508, suspect messages are sent to a bulk mail folder in step 516 and other messages are sorted normally into the user's mailbox in step 512" and that "mail moved to the bulk mail folder can be later refuted in step 524 and sorted into the mailbox normally in step 512" (Col. 8, lines 31-39 – emphasis added). Clearly, moving messages to a folder which may later be access and refuted, as in Ralston, does not meet any sort of "deleting the electronic mail message," in the manner claimed by appellant (emphasis added). Again, Ralston teaches that suspect messages are sent or moved to a bulk mail folder and may be later refuted and sorted into the mailbox normally, which fails to even suggest "deleting the electronic mail message if the message is identified as an unsolicited message," as claimed by appellant (emphasis added).

Again, appellant respectfully asserts that the Ralston reference fails to meet all of appellant's claim language, as noted above.

Group #4: Claim 11

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With respect to appellant's claimed "updating the database with new checksums," the Examiner has simply stated that Ralston teaches that "[a]ny message unique to the mail system has its fingerprint stored in the message database (206) to allow for matching to subsequent messages." However, the Examiner has failed to note any specific excerpt from Ralston that teaches such claim language. Appellant notes that Ralston only teaches that "[i]f there is no match, the fingerprint for the message is added to the store(s) in step 682" (emphasis added). Appellant further notes that such store is only utilized "[t]o determine if the e-mail message 400 has been sent a number of times over a given time period" (see Ralston, Col. 9, line 65-Col. 10, line 10). Thus, simply nowhere in Ralston is there any disclosure of "updating the database with new checksums" where such database contains "checksums for previously identified unsolicited messages" in the context claimed by appellant (see independent claims for context).

In the Examiner's Answer mailed 07/14/2006, the Examiner has argued that Ralston teaches "the act of adding new fingerprints to the message database (message database 206 stores fingerprints for messages received by the mail system 112) of fingerprints (step 682 of Fig. 6A), does in effect teach updating the messages (databases(s)) with new fingerprint (checksum) content." In addition, the Examiner argued that "[t]he implication is that the message database would have contained fingerprints of messages previously processed in order to act as a check for newly incoming messages to determine whether or not they contain fingerprints of unsolicited content."

Appellant respectfully disagrees with the Examiner's arguments and respectfully asserts that Ralston discloses that in order "[t]o determine if the e-mail message 400 has been sent a number of times over a given time period, an algorithm is used to determine if the e-mail message 400 is similar to others received over some time period in the past" (Col 9, line 65-Col. 10, line 1 – emphasis added). Further, Ralston discloses that in step 664 "[i]f there is no match, the fingerprint for the message is added to the store(s) in step 682" (Col. 10, lines 14-15 – emphasis added) where step 682 in Figure 6C is defined as "Store Entry in Respective Short-Term Store." However, the mere disclosure that messages are fingerprinted and stored in the short-term store to determine if the e-mail message has been sent a number of times fails to even suggest appellant's claimed "updating the database with new checksums" (emphasis added) where such database contains "checksums for previously identified unsolicited messages" (emphasis added) in the context claimed by appellant (see independent claims for context).

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Again, appellant respectfully asserts that the Ralston reference fails to meet all of appellant's claim language, as noted above.

Group #5: Claim 12

Again, with respect to the subject matter of Claim 12, the Examiner has simply stated that Ralston teaches that "[a]ny message unique to the mail system has its fingerprint stored in the message database (206) to allow for matching to subsequent messages." However, the Examiner has failed to note any specific excerpt from Ralston that teaches such claim language. Appellant notes that Ralston only teaches that "[i]f there is no match, the fingerprint for the message is added to the store(s) in step 682" (emphasis added). Appellant further notes that such store is only utilized "[t]o determine if the e-mail message 400 has been sent a number of times over a given time period" (see Ralston, Col. 9, line 65-Col. 10, line 10). Thus, simply nowhere in Ralston is there any disclosure of a "database [that] is updated based on checksums generated from electronic messages received and identified as an unsolicited message" (Claim 12 et al.- emphasis added).

In the Examiner's Answer mailed 07/14/2006, the Examiner has argued that Ralston teaches "that the message database contains fingerprint(s) (checksums) for all of the messages received and therefore would contain those related to unsolicited content" and that "[t]he database would therefore also be regularly updated."

Appellant respectfully disagrees and respectfully asserts that Ralston discloses that in order "[t]o determine if the e-mail message 400 has been sent a number of times over a given time period, an algorithm is used to determine if the e-mail message 400 is similar to others received over some time period in the past" (Col 9, line 65-Col. 10, line 1 – emphasis added). Further, Ralston discloses that "a fingerprint is produced from the message body 408" and that "[t]he fingerprint is checked against the message database 206" (Col. 10, lines 3-7 – emphasis added). In addition, Ralston discloses that "[i]f there is no match, the fingerprint for the message is added to the store(s) in step 682" (Col. 10, lines 14-15 – emphasis added). The mere disclosure that in order to determine if the e-mail has been sent a number of times, a fingerprint is produced from a message body, checked against the message

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database, and added to the message data if there is <u>not</u> a match, as in Ralston, simply fails to even suggest that the "database is updated based on checksums generated from electronic messages received <u>and identified as an unsolicited message</u>," as claimed by appellant (emphasis added). In addition, determining if a message has been sent a number of times, in the context disclosed in Ralston, fails to suggest that the message is "identified as an unsolicited message," as claimed by appellant.

Again, appellant respectfully asserts that the Ralston reference fails to meet <u>all</u> of appellant's claim language, as noted above.

Group #6: Claim 24

The Examiner has simply relied on the rejections made with respect to Issue #1, Group #1 above to make a prior art showing of appellant's claimed technique "wherein the non-static data is removed prior to the checksum being generated." For substantially the same reasons as argued above with respect to each of the independent claims, appellant respectfully assert that Ralston's <u>hidden</u> information does not meet appellant's claimed "non-static data."

In the Examiner's Answer mailed 07/14/2006, the Examiner has argued that Ralston teaches "that headers and hidden information is removed prior to attempting to identify the message as being unsolicited (Figs. 7A-D)." Appellant respectfully disagrees and respectfully points out that Ralston teaches that "[i]nformation such as <u>headers or hidden information in the body</u> 408 of the message 400 <u>is removed</u> to leave behind the visible body 408 of the message 400 in step 708" (Col. 12, line 66-Col. 12, line 2 – emphasis added). Clearly, Ralston's mere disclosure of removing headers or hidden information in the body fails to even suggest a technique "wherein <u>the non-static data is removed</u> prior to the checksum being generated" as claimed by appellant (emphasis added). Appellant also respectfully points out the arguments made above with respect to Issue #1, Group #1 which clearly show that Ralston's disclosure of "removing headers or hidden information in the body" fails to meet appellant's specific claim language.

Again, appellant respectfully asserts that the Ralston reference fails to meet <u>all</u> of appellant's claim language, as noted above.

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Issue # 2:

Group #1: Claims 4, 16, 21 and 23

The Examiner has argued that "it is notoriously well known in the art to make comparisons between items in any order [and that t]herefore it would have been obvious to one of ordinary skill in the art at the time of the invention to compare checksums in either direction (top to bottom, or bottom to top) providing the benefit of identifying unsolicited emails."

Further, the Examiner has responded to appellant's arguments that simply because it is allegedly well known to make comparisons between items in any order, as the Examiner contends, such does not make appellant's specific claim language obvious. In particular, the Examiner has argued that appellant's claim language is confusing as to the motivation for "comparing a checksum comprises comparing checksums starting with one of the portions at the end of the remaining data and working backwards through the data." The Examiner has argued that such claim language seems moot in light of the prior removal of non-static material when read in view of the specification (Page 11, lines 14-19).

Appellant respectfully disagrees with this assertion. Simply because it is allegedly well known to make comparisons between items in any order, as the Examiner contends, such does not make appellant's specific claim language obvious. Appellant does not merely claim comparing items in any order, but claims, in the relevant claim(s), comparing checksums <u>for each portion of remaining data</u> starting at the end of the remaining data and working backwards through the data. Thus, each portion of remaining data has an associated checksum which is compared starting at the end of the remaining data, working through to the beginning of the remaining data. Thus, such feature would not be obvious in view of the claimed context of such comparing and in view of the advantages thereof, namely in order to reduce required processing.

Thus, it seems the Examiner has simply dismissed such claim language under Official Notice. In response, appellant again points out the remarks above that clearly show that such claim

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language would not have been obvious. Appellant thus formally requests a specific showing of the subject matter in ALL of the claims in any future action. Note excerpt from MPEP below.

"If the appellant traverses such an [Official Notice] assertion the examiner should cite a reference in support of his or her position." See MPEP 2144.03.

In the Examiner's Answer mailed 07/14/2006, the Examiner has argued "an example where a user can check a document either from top to bottom or from bottom to top can be found in the act of searching for text in applications such as Microsoft Internet Explorer® where the user can choose to being searching either in forward or reverse order (seen in dialog box invoked by simultaneously depressing the Control and F keys and choosing either forward or backward buttons)."

Appellant respectfully disagrees with the Examiner's argument and asserts that Microsoft Internet Explorer® merely discloses buttons for searching for the previous and next occurrence of a word. Clearly, merely disclosing previous and forward buttons simply fails to even suggest "compar[ing] the generated checksums starting with one of the portions at the end of the data and works backwards through the data" (see the same or similar, but not necessarily identical language in Claims 4, 16 and 21-emphasis added) or that "the comparing starts with one of the portions at the end of the remaining data and works backwards through the data, in order to reduce required processing" as claimed by appellant (see Claim 23-emphasis added).

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

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With respect to the first element of the *prima facie* case of obviousness and, in particular, the obviousness of combining the aforementioned references, the Examiner has failed to argue why it would be obvious to combine the *non-analogous art* of Microsoft Internet Explorer® with the teachings of Ralston. Appellant respectfully asserts that it would not have been obvious to combine the teachings of the Microsoft Internet Explorer® and Ralston references, especially in view of the vast evidence to the contrary.

For example, Ralston relates to the processing of electronic text communication distributed in bulk, while Microsoft Internet Explorer® relates to an internet browser. To simply glean features from an internet browser, such as that of Microsoft Internet Explorer®, and combine the same with the *non-analogous art* of processing of electronic text communication distributed in bulk, such as that of Ralston, would simply be improper. An internet browser implements software for browsing web documents, while the processing of electronic text communication distributed in bulk involves methods for blocking electronic text communication distributed in bulk. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In re Oetiker, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992). In view of the vastly different types of problems addressed by an internet browser as opposed to those addressed by the processing of electronic text communication distributed in bulk, the Examiner's proposed combination is clearly inappropriate.

Appellant respectfully asserts that at least the first and third element of the *prima facie* case of obviousness have not been met, since it would be *unobvious* to combine the references, as noted above, and the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #2: Claim 19

Appellant respectfully asserts that the subject matter of such claims is deemed novel in view of the arguments made hereinabove with respect to Issue #1, Group #1.

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Group #3: Claim 22

Appellant respectfully asserts that the subject matter of such claims is deemed novel in view of the arguments made hereinabove with respect to Issue #1, Group #3.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

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In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P315/01.180.01).

Respectfully submitted,

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